

## **BRIEFING NOTES**

<b>NAME OF GROUP:</b>	PLANNING COMMISSION
<b>DATE, TIME AND PLACE OF MEETING:</b>	Wednesday, June 12, 2013, 1:10 p.m., Hearing Room 112, County-City Building, 555 S. 10 <sup>th</sup> Street, Lincoln, Nebraska
<b>MEMBERS IN ATTENDANCE:</b>	Michael Cornelius, Tracy Corr, Cathy Beecham, Chris Hove, Jeanelle Lust, Dennis Scheer, Lynn Sunderman and Ken Weber; Marvin Krout, Steve Henrichsen, Sara Hartzell, Christy Eichorn, Jean Preister and Teresa McKinstry of the Planning Department.
<b>STATED PURPOSE OF MEETING:</b>	Briefing on upcoming proposed city and county text amendments to the zoning and subdivision regulations; proposed text amendment to the city zoning ordinance regarding “decks”; and “Part 1 of the Planning Department Self-Assessment”.

### **Proposed City and County text amendments to the zoning and subdivision regulations (attached):**

Sara Hartzell of Planning staff briefed the Commission on several text amendments coming forward for public hearing on the June 26<sup>th</sup> Planning Commission agenda.

The first issue came up during the final plat process creating an outlot for farm use with farm buildings on it. Currently, the definition of “outlot” does not allow any buildings. However, staff believes that there may be times when it makes sense to allow buildings on an outlot for equipment needs, shelter for animals, for common use with maintenance shed or picnic shelter, etc. The Building & Safety Department, City Attorney and County Engineer have come up with proposed definitions, resulting in proposed text amendments to the zoning and subdivision regulations accordingly. The proposal separates outlots into two types: 1) set aside now but intended to be subdivided at a later time, with no buildings, and 2) anticipated to stay as an outlot used for agriculture permanently, etc. Buildings associated with that particular use are appropriate.

Hartzell then explained other miscellaneous amendments to the county zoning and land subdivision resolutions:

1. Article 3, Districts and Boundaries: This winter and spring, Hickman went through some updates to their zoning code. Instead of the traditional extraterritorial jurisdiction (ETJ) circling the community, they are pulling back slightly to create more of a 90 degree stepped boundary. They are not extending outside the one-mile. (Map attached)
2. Article 22.005 - Notice of Hearing: The proposal removes the requirement to publish notice of public hearings in any county which has territory within three miles of the property affected by such action. Some of the newspapers in the smaller communities are only published weekly making it difficult to publish the notice timely. This is not a state statute requirement.
3. Staff has discovered a requirement in state statute relating to zoning map changes. If the map change is found not to be in conformance with the Comprehensive Plan, 20% or more of the adjacent property owners can protest the change, and the County Board would need a super-majority (4 of 5) to approve that map change. This amendment appears in Article 22, section 22.003 c).

Lust inquired whether accessory building or accessory use is defined in either one of the codes, so that when we say “accessory buildings” are permitted, that term is defined in the code. Hartzell indicated that they are defined in the code.

### **Proposed Text Amendment for Decks**

Christy Eichorn briefed the Commission on a proposed text amendment regarding decks in terms of the efforts to streamline development proposals. Research indicates that amendments to allow decks of varying sizes on existing homes have almost always been approved. One of the reasons we need to do this is because neighborhoods are treated differently. In a CUP special permit, if you don't meet setback requirements you can come to Planning and ask for an administrative amendment to the permit to allow to encroach into the side or rear yard. Most of the time, and almost always for a deck, it's usually for the rear yard, covered or not covered. These administrative amendments are almost always approved. Therefore, the thought is to make it a conditional use. If you live in a neighborhood that is not in a CUP, there is no mechanism to make this adjustment other than showing a hardship at the Board of Zoning Appeals. The staff is interested in establishing some standard conditions that would apply to all lots across the city.

The draft text amendment has been presented to the Mayor's Neighborhood Roundtable. Staff is seeking feedback.

The proposal is to allow improvements or expansion of decks up to half the distance of the rear yard. The rear yard is 30 feet or 20% of the depth of the lot, whichever is less. If the depth of the lot is 150 feet or more, the rear yard is always going to be 30 feet. If it is less than 150 feet, then it will be the 20% that determines the rear yard, and at this point that

rear yard has to remain open space. You can put accessory structures such as garages or sheds in the rear yard, but you cannot use up more than 40% of the rear yard with accessory structures.

Eichorn showed some examples of lots that are about 110 feet deep, needing 22 feet rear yard. The proposal is to allow a deck that could encroach into the 22 feet as far as 11 feet from the rear lot line, i.e. half the distance of the required rear yard. You could have an accessory building in the rear yard and have the deck that would also encroach into the rear yard, taking up potentially 90%.

Beecham asked for examples of neighborhoods that would not be covered by this amendment. Eichorn suggested that it would be a lot of the older areas, such as Near South, Hartley, near 84<sup>th</sup> & A, etc. Those areas are not in a CUP. A lot of the newer neighborhoods built since the 1980's are in a CUP.

Eichorn also explained that particularly for areas where there is not a lot of objection from neighbors to improve the properties, the proposal allows the patios and paving stones to encroach into the side and rear yard setbacks.

Lust inquired about the objections to decks. Eichorn explained that some of the concerns are that the rear yards should be open space and that they should be used for green space without buildings or structures; and that if you allow decks in the rear yards, you can look into your neighbor's yard. Decks are allowed on first, second and third stories today.

Scheer does not think this is a huge issue at the first story or ground level or 3' to 5' above the ground deck. His concern would be the possibility of the second or third story deck extending over essentially the vast majority of the rear yard. What do you do with the space below it? Potentially, there are sustainability issues, reducing the ability of rear yards to absorb rain water and do all kinds of things. It's those taller decks that could be the issue here. We need to figure out how that could impact a good healthy neighborhood.

Eichorn explained that the staff is in the early stages of developing this text amendment and is seeking feedback.

Cornelius inquired about the number of amendments. Eichorn stated that there have been 22 applications to amend a setback for a deck in the last five years, and she does not believe there was a single one that was denied. Eichorn noted that in the last few years, the staff has made more effort to send notification to adjacent neighbors. The applicant is also given direction to talk to their neighborhood association to see if the entire association might be interested to participate in these amendments just to streamline the process. It is better to amend the entire CUP than just one or two lots.

Beecham noted that in older neighborhoods, there might be a parking pad behind the house that is extending into the back yard. How does the setback work with this deck

idea? Eichorn stated that parking is allowed in the rear yard and paving or paving stones are also allowed in the rear yard.

Hove inquired whether the amendment discusses whether the deck is enclosed. Eichorn stated that the intent is to allow uncovered and covered decks, but not to enclose those decks so as not to make it part of the main building. Screening is considered enclosing.

With regard to the height of the deck, especially in a neighborhood with very shallow rear yards and decks at upper elevations, Scheer suggested that consideration should be given to sunlight. This will reduce the amount of sunlight able to penetrate in those rear yards. If you have back-to-back lots and everybody was doing this, you would have a very, very narrow slit of area that could have an inappropriate amount of sunlight getting down into those rear yards. It could almost be a canyon effect if you went to the extreme. We can calculate sun angles. It could potentially impact someone else's property, especially if it is a tall deck.

Lust inquired whether staff has considered design or material standards to accommodate runoff, color, etc. Eichorn replied that the staff has not looked at material standards because part of the reason we want to have this ability is to allow property owners to do what they want to do with their rear yard. Material comes into play at the building permit phase.

Steve Henrichsen of Planning staff offered that most of the newer areas of town that have been built since 1970 is where you will find CUP's.

Eichorn suggested that there is a need to find a solution to allow improvements, particularly in older neighborhoods.

Lust wondered why we could not allow existing decks in rear yards. Eichorn suggested that staff will research this possibility.

Lust noted that those that have applied have been approved. Is it just that the people that aren't living in a CUP are not applying? Eichorn explained that if the property is not in a CUP, Building & Safety will deny the building permit. We have no idea how many people come in and ask for this.

Corr observed that those disadvantaged are in the core older neighborhoods.

If you have an existing deck that encroaches more than it should, Weber wondered why you wouldn't be able to repair it to the same size.

Beecham is interested in the feedback received from the Neighborhood Roundtable. Eichorn advised that she is going back to the Neighborhood Roundtable in July for that purpose.

Lust does not understand why this is changing the process in the CUP areas where people are getting approval when the real problem is the older neighborhoods where they can't build a deck in the rear yard. Eichorn explained that the amendment to the CUP process will provide an avenue to ask for the adjustment, but if we have a standard across the board with 10' minimum, then we don't need to go through the paperwork and process to grant these amendments on a case-by-case basis. This keeps people from having to do an amendment to the CUP in order to get a building permit. It is part of our effort to streamline and save money.

Marvin Krout, Director of Planning, suggested that ultimately, if we don't continue to look for ways to streamline and the community grows, then the Planning Department is going to have to grow to keep up with it. It is not easy to get additional people in any department.

Lust wondered how much advice and changes are suggested by staff to the applicants when they apply. Eichorn responded that the staff almost always needs to provide advice and make suggestions. Lust wondered whether we want to lose the ability to do that. Eichorn explained that no matter what we approve, the Building & Safety rules trump the Planning Department rules. The inconsistency is part of the problem. There is a need to align the language with the building codes.

### **Part 1 of Planning Department Self-Assessment**

Sara Hartzell of Planning staff explained that when the city changed to a two-year budget, the Planning Department took the time in this off-year that is normally used during the budget preparation process to go through a self-assessment process. The Planning Department is interested in how people feel the city is doing in the development process; whether we are accomplishing planning goals; and how the Planning Department is doing in terms of getting information out and being receptive, helpful and having good customer service.

The staff conducted an unscientific survey. An electronic survey was sent to the Department's large list of contacts acquired during the Comprehensive Plan update as well as 350 email addresses from the recordkeeping on applications. Printed surveys were also distributed to the libraries. About 450 people responded. Hartzell distributed a four-page summary of the survey results (attached). There is a full report on the Web site. The results of the survey showed large gaps in traffic congestion and affordable housing. Off-street trails had very little gap in meeting the expectation, as well as entertainment in Downtown and preservation of farmland. 60% of the people that took the survey indicated they have had contact with the Planning Department.

At the end of the survey we asked people to tell us if they would participate in a focus group conversation. There were 175 individuals interested in participating. They were separated into different groups based upon their areas of interest and invited to a focus group session. The four groups included development-related professionals, attorneys,

builders, financial, architects, and business and other professionals including software industry and some real estate professionals and banking. There were two groups of members of neighborhood or homeowners associations or they were just interested citizens. Most of the people who participated are very happy that they live in Lincoln and had some good suggestions for improvements.

Focus group sessions were also held with all of the boards staffed by the Planning Department, including Historic Preservation Commission, Urban Design Committee, and the Board of Zoning Appeals, and interagency staff that the Planning Department works with on a regular basis.

At the next Planning Commission meeting, the staff will have a focus group discussion with the Planning Commission on Wednesday, June 26<sup>th</sup>, at 12:00 Noon.

Lust referred to the tables in the report and wondered why the scales start with zero. Hartzell acknowledged that zero means nothing. Three is average.

Cornelius wondered if there is any peer community where everyone thinks traffic is great. Hartzell reported that Lincoln's average commute time ranks fairly low (good) in every comparison that she has seen. Krout offered that during the Comprehensive Plan update, we actually found that people in 2010 were not responding that traffic was as big an issue as compared to 2000.

Meeting adjourned at 2:05 p.m.